



**STATE OF NEW HAMPSHIRE**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Hampton Fire Department Supervisory Association,  
Local 3017, IAFF, AFL-CIO, CLC

Complainant

v.

Town of Hampton

Respondent

Case No: F-0127-7

Decision No. 2005-108

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Town of Hampton

Complainant

v.

Hampton Fire Department Supervisory Association,  
Local 3017, IAFF, AFL-CIO, CLC

Respondent

Case No: F-0127-8

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

The Hampton Fire Department Supervisory Association, Local 3017, IAFF (hereinafter "the Association") filed an unfair labor practice complaint on June 3, 2005 alleging that the Town of Hampton (hereinafter "the Town") violated RSA 273-A:5 I (h) by breaching the parties' collective bargaining agreement ("CBA"). More specifically, the Association states that on or about March 24, 2005, Robin Arsenault, the Fire Prevention Secretary, was notified that she would be laid off from her position effective April 6, 2005. As a result, the Association filed a grievance on her behalf alleging a violation of Article 4 of the parties' CBA because there was no lack of funds. The Association also alleges that on or about April 8, 2005, Deputy Fire Chief Steven Benotti was notified that that he would be reassigned to the rank of Captain effective April 13, 2005. Thereafter, the Association filed a grievance on his behalf alleging violations of Article 4 and 13 of the CBA, again based upon the position that there was no lack of work or lack of funds upon which to lay Mr. Benotti off and because the Town had failed to lay off the

employee in the classification with the least seniority. The Association states that when the Town Meeting rejected the Town's recommended budget, the Town instituted a default budget that contained sufficient funds to support the positions of Fire Prevention Secretary and Deputy Chief of Operations. It therefore maintains that despite the existence of sufficient funds, the Town laid off these two employees contrary to the contractual requirement that they be laid off only in cases of lack of work or lack of funds.

Subsequent to filing of the instant complaint, and specifically in its answer to the Town's complaint in Case No: F-0127-8, the Association states that while it did file grievances under the CBA in good faith, after meeting with the Board of Selectmen, it accepted their reasoning that these matters were not grievable under Article 4 and thus it has not pursued them to arbitration.

As remedies, the Association requests that the PELRB (1) find that the Town has violated Articles 4 and 13 of the CBA, thus committing an Unfair Labor Practice; (2) order the Town to restore the two employees to their rightful positions and make them financially whole; (3) order the Town to cease and desist from further violations of the CBA; and (4) grant such other and further relief as it deems just under the circumstances.

The Town filed its answer denying the Association's charge on June 17, 2005. Although the Town generally admits to the chronology of events as described in the Association's charge, it denies any violation of the CBA or RSA 273-A. The Town requests, among other things, that the PELRB dismiss the Association's complaint, deny the relief being sought and grant such other relief as it deems just and appropriate.

On June 23, 2005, the Town filed an improper practice charge against the Association alleging a violation of RSA 273-A:5, II (f) when it pursued the above-referenced grievances in violation of Article 4 of the CBA. The Town asserts that in accordance with Article 4 (Management Rights Clause), the Town acted within its management rights by separating Ms. Arsenault from employment as it did, by removing the Deputy Fire Chief of operations from the operation of the department, and by reassigning Mr. Benotti to the position of Captain. The Town further maintains that these issues fell within its management rights and, pursuant to Section 2 of Article 4, they were not subject to the CBA's grievance procedure. The Town therefore requests, inter alia, that the PELRB dismiss the Association's complaint in Case No. F-0127-7 and find that the Association has itself violated RSA 273-A:5, II (f).

The Association filed an answer denying the Town's charge, as well as a Motion to Dismiss, on July 8, 2005. The Association states, among other things, that the Town's actions did violate the management rights clause and thus the Association's complaint is ripe for adjudication before this Board. Moreover, the Association submits that the Town is precluded from pursuing its' complaint because it has not filed a grievance or otherwise exhausted its contractual remedies as set forth within the CBA's grievance procedure. The Association points out that under Article 30 (Grievance Procedure), the Town has "the right to initiate a grievance growing out of a dispute, claim or complaint arising under the terms of [the] Agreement." On July 12, 2005, the Town filed an objection to the Association's Motion to Dismiss. It states, inter alia, that the Association's contention that the Town must file a grievance over the Association's grievance is not supported by law or by common sense.

A pre-hearing conference was conducted by the undersigned-hearing officer at PELRB offices on August 19, 2005.

PARTICIPATING REPRESENTATIVES

For the Association: John S. Krupski, Esq.

For the Town: Elizabeth A. Bailey, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

Case No: F-0127-7:

(1) Whether or not the Town committed an improper labor practice, within the meaning of RSA 273-A:5 I (h) [...to breach a collective bargaining agreement], when it laid off Fire Prevention Secretary Robin Arsenault in April 2005, and/or when it laid off Deputy Fire Chief Steven Benotti in April 2005 and assigned him to the position of Captain.

(2) If so, what shall be the remedy?

Case No: F-0127-8:

(3) Based upon the Town's alleged failure to exhaust its remedies as set forth in the grievance procedure of the parties' CBA, does the Board have jurisdiction over the Town's instant complaint?

(4) If so, whether or not the Association committed an improper labor practice, within the meaning of RSA 273-A:5 II (f) [...to breach a collective bargaining agreement] by filing grievances alleging violations of Article 4 of the parties' CBA regarding Ms. Arsenault and Mr. Benotti.

(5) If so, what shall be the remedy?

WITNESSES

For the Association:

1. Justin Cutting, Association President
2. Hank Lipe, Fire Chief
3. Robin Arsenault, Grievant
4. Steven Benotti, Grievant
5. William Sullivan, Former Member, Board of Selectmen
6. James Barrington, Town Manager

For the Town:

1. Hank Lipe, Fire Chief
2. James Barrington, Town Manager
3. Steven Benotti, Grievant
4. Robin Arsenault, Grievant
5. Christopher Silver
6. Justin Cutting, Association President
7. Dawna Duhamel, Town Financial Officer

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

#### EXHIBITS

Joint Exhibits:<sup>1</sup>

1. Parties Collective Bargaining Agreement
2. Letter from Chief Lipe to Robin Arsenault, 3/24/05
3. General Order 05-06, signed by Chief Lipe, 3/30/05
4. Letter to Chief Lipe from Justin Cutting, 4/6/05
5. Letter to Justin Cutting from Chief Lipe, Denial of Arsenault Grievance, 4/6/05
6. Letter to James Barrington from Justin Cutting, 4/11/05
7. Letter to Justin Cutting from James Barrington, Denial of Arsenault Grievance 4/15/05
8. Letter to James Workman, from Justin Cutting, 4/20/05.
9. Letter to Justin Cutting from James Workman, Denial of Arsenault Grievance, 5/5/05.
10. Letter to Deputy Chief Steven Benotti from Chief Lipe, 4/8/05.
11. Letter to Chief Lipe from Justin Cutting, 4/12/05.
12. Letter to Justin Cutting from Chief Lipe, 4/15/05.
13. Letter to Chief Lipe from Justin Cutting, 4/20/05.
14. Letter to Justin Cutting from Chief Lipe, Denial of Benotti Grievance, 4/20/05.
15. Letter to James Barrington from Justin Cutting, 4/20/05.
16. Letter to Justin Cutting from James Barrington, Denial of Benotti Grievance 4/22/05.
17. Letter to James Workman, from Justin Cutting, 4/26/05.
18. Letter to Justin Cutting from James Workman, Denial of Benotti Grievance, 5/5/05.
19. Default Budget of Town of Hampton for 1/1/05-12/31/05.

<sup>1</sup> During the pre-hearing conference, counsel for the parties indicated that they would be meeting again on August 23, 2005 for the purpose of finalizing joint stipulations and exhibits. Accordingly, the numbering of the exhibits as listed herein may not correspond to those referenced in the parties' forthcoming statement of agreed facts.

20. 2005 Town Voting Report
21. Hampton Board of Selectmen's meeting minutes, 3/14/05.
22. Hampton Board of Selectmen's meeting minutes, 3/21/05.
23. Hampton Board of Selectmen's meeting minutes, 3/28/05.
24. Hampton Board of Selectmen's meeting minutes, 4/4/05.

For the Association:

None other than those marked as "Joint."

For the Town:

None other than those marked as "Joint."

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### LENGTH OF HEARING

The time being set aside for this hearing is one-half day.

#### DECISION

1. PELRB Case No. F-0127-7 and Case F-0127-8 are hereby consolidated.
2. The parties' representatives shall meet, or otherwise confer, on or before **August 23, 2005** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document, along with any corresponding exhibits, with the PELRB by **August 24, 2005**.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, by **August 23, 2005**. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an adjudicative hearing between the parties will be held on:

August 25, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 19<sup>th</sup> day of August, 2004.

A handwritten signature in dark ink, appearing to read "Peter C. Phillips", written over a horizontal line.

Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

John S. Krupski, Esq.

Elizabeth A. Bailey, Esq.